IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.157 of 2006

Reserved on:16.11.2006.

Decided on:November 27, 2006

Oriental Insurance Company Ltd. …..Appellant.

VERSUS

Pushpa & Ors. …..Respondents.

Coram

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?[1] Yes.

For the Appellant: **Mr.Ashwani K.Sharma, Advocate.**

For the Respondents: **Mr.Gulzar Rathore, Advocate for respondents No.1 & 2.**

Mr.Ramakant Sharma, Advocate for respondent No.3.

Deepak Gupta, Judge.

This appeal under Section 30 of the Workmen's Compensation Act is directed against the order dated 27.3.2006 of the Commissioner Workmen's Compensation Act, Theog whereby in case No.8/2004 he has awarded compensation of Rs.4,03,320/- and interest of Rs.1,08,896/- total Rs.5,12,216/- in favour of the claimants and has held the Insurance Company liable to pay the amount.

2. The appeal was admitted on the following substantial questions of law:-

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?Yes.***

1) Whether the cover note which was issued on 18.12.2003 at 9 P.M. specifying the insurance coverage to be effective from 19.12.2003 to 19.12.2004, could it be deemed that insurance coverage had become effective from mid-night of 18.12.2003?

2) Whether impugned Award ordering indemnification of insured / owner of vehicle by mulcting the liability of amount of compensation payable to the claimants on the insurance company is legal and justified when there was no effective insurance coverage at the time of accident?

3) Whether the insurer is not liable to deposit the amount on account of interest on compensation amount and whether impugned order awarding interest on compensation amount to the claimants is against the provisions of the Workmen's Compensation Act?

QUESTIONS No.1 & 2:

3. To decide both these questions, it would be appropriate to give the background of the case. The cover note in this case is Ext.PW-2/A. The said cover note was issued on 18.12.2003 at 9 p.m. and as per the specific terms in the cover note the same was effective from 19.12.2003 to 18.12.2004. The accident out of which the proceedings arise had occurred on 18.12.2003 between 4 and 5 p.m.

and in fact the F.I.R. Ext.PW-1/A had been recorded on 18.12.2003 at about 7 p.m.

4. It is contended by Shri Ramakant Sharma, appearing on behalf of the owner that the policy was in fact issued at 9 a.m. on 18.12.2003. This contention appears to be totally incorrect because a perusal of the cover note Ext.PW-2/A clearly shows that the same was issued at 9 p.m. and made effective from 19.12.2003 to 18.12.2004. It is apparent that the owner has obtained this policy after the accident had occurred and at the time of the accident the vehicle was not covered by any policy of insurance.

5. Even assuming for the sake of argument that the policy was issued at 9 a.m. then also the Insurance Company could not have been made liable. The law in this regard is now well settled. A three Judge Bench of the Apex Court in ***H.V.Panchaksharappa vs. K.G.Eshwar {2000 (2) SLJ 1526}*** has held that if in the policy of insurance it is mentioned that the policy is to be commenced at a later date the parties are bound by the contract and it cannot be said that the policy comes into effect prior to the date and time of its effectiveness mentioned in the cover note / policy. The Apex Court in ***National Insurance Company vs. Chinto Devi {2002 (SLJ) 1541}*** also took the same view.

6. In view of the aforesaid finding, it is clear that in the present case the Commissioner Workmen's Compensation has totally mis-directed himself in holding that the Insurance Company was liable to satisfy the award. He has not taken into consideration the law as

settled by the Apex Court. Reliance has been placed by the Commissioner on a judgment of the Gauhati High Court in ***National Insurance Co.Ltd. vs. Ashoka Das & Ors. (II (2001) ACC 745}.*** In that case the date of commencement was mentioned and the time was not mentioned. It was in these circumstances that the Court held that the policy would commence from 00 hours of the said date. In the present case, the date of commencement of the policy was clearly stipulated in the cover note as 19.12.2003. Therefore, the insurance company could not have been held liable for an accident which took place on 18.12.2003.

Question No.3:

7. Since I have held that the Insurance Company is not liable to pay the compensation, the question of payment of interest does not arise and this question is answered accordingly.

8. As a result of the above discussion, the appeal filed by the Insurance Company is allowed and the award of the Commissioner Workmen's Compensation, insofar as he holds the Insurance Company liable to pay the awarded amount, is set aside. The Insurance Company may recover the amount already paid by it from the insured and also the claimants.

(Deepak Gupta)
Judge.

November 27, 2006
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